

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ROSS DRESS FOR LESS, INC., a
Delaware Corporation,

Plaintiff,

v.

No. 3:14-cv-01971-SB

MAKARIOS-OREGON, LLC, an
Oregon limited liability
company; and WALKER
PLACE, LLC, an Oregon limited
liability company,

Defendants.

DEPOSITION OF
JOHN HASKINS

Wednesday, October 21, 2015
(Volume II, pages 124 - 192)

REPORTED BY: DONIELLE DEL CARLO, CSR 10476

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1 right now, but let me just get some clarity. In
2 your last deposition -- well, as you're aware, there
3 are two buildings involved in this litigation. One
4 is the building owned by my client, Walker Place,
5 LLC, which is the 620 building located at 620
6 Southwest Fifth Avenue here in Portland, Oregon.

7 We've called it by various names,
8 including the "620 Building," the "Failing
9 Building," and, I think, in your prior deposition
10 you referred to it as the "Brandon Building."

11 A Correct.

12 Q Okay. And then there's a separate
13 building owned by the Makarios group which is known
14 as the Richmond Building.

15 A I believe I --

16 Q Correct?

17 A Correct. I believe I referred to that as
18 Calomiris.

19 Q Yeah. That's right. The Calomiris
20 Building or the tall and the short building.
21 Brandon has -- 620 building is the tall building,
22 Calomiris is the short building, correct?

23 A Correct.

24 Q Okay. If you could just -- I just want to
25 set the stage again to get us started. I understand

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1 from review -- well, let me ask you this: Prior to
2 your deposition today, have you reviewed any
3 additional documents to prepare for your deposition
4 today?

5 A I looked at exhibits for today that
6 were -- I guess with counsel.

7 Q Okay. And part of the materials I sent to
8 counsel I also provided a mini deposition transcript
9 of your prior deposition testimony. Did you have a
10 chance to read your prior dep -- your prior
11 testimony before today?

12 A I did.

13 Q Okay. And did you actually read it or did
14 you actually review it?

15 A I did.

16 Q Okay. To get us started, I understand
17 that you were involved with the construction and
18 build out of the -- of these two buildings with
19 regard to Ross' use of them back in '96; is that
20 right? Is that correct?

21 A Correct.

22 Q If you could just set the stage for us
23 again, what was your title and role with regard to
24 that -- to that build out?

25 A My title was Director of Construction. My

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1 role was to oversee both the store design and
2 construction of the Ross store. Which included both
3 buildings.

4 Q Okay. And it's my understanding from your
5 prior deposition that you didn't have any role or
6 knowledge of the acquisition process of the
7 buildings; is that correct?

8 A That's correct.

9 Q Okay. I want to focus on a couple of
10 things in particular to the -- well, actually, let
11 me ask you this: In your prior deposition -- at the
12 beginning of your deposition when you were asked
13 about this you indicated, I could read it to you,
14 that you were more familiar with what you called the
15 Brandon Building. Do you recall that -- that
16 testimony?

17 A That I was more familiar?

18 Q Yes.

19 A I don't recall that or the context of it.

20 Q Let me ask you --

21 A If you could read it to me then maybe I
22 could --

23 Q Are you familiar with issues pertaining to
24 the Failing Building than you are with the Calomiris
25 Building?

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1 A I'm not sure I understand what issues you
2 mean.

3 Q Well, let's -- well, let me ask you this:
4 When you call it the Brandon Building, I take it
5 you're referring to Brandon Anderson, one of the
6 principals in Walker Place, LLC, correct?

7 A Correct.

8 Q But you refer to him as Brandon. In what
9 context did you come to understand that Brandon
10 Anderson owned this property through his LLC?

11 A I think it's just by reference, and that's
12 what I remember.

13 Q Did you ever meet Mr. Anderson?

14 A I don't recall. I don't think I've ever
15 met him, no.

16 Q Okay. Well, then, let's -- let's go back
17 to 1996, and just generally what was your
18 understanding of the scope of work Ross undertook to
19 make those -- those two buildings ready for its
20 intended use?

21 A The scope of work would have been to
22 conform to basically the Ross store plan, via design
23 and construction, and get that to opening for
24 operation.

25 Q Okay. And your role on this particular

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1 MS. REICHMUTH: Objection. Vague and
2 ambiguous.

3 THE WITNESS: Are you talking about from
4 the prior use?

5 MS. REICHMUTH: I'm talking about the
6 condition of the basement and the staircase as it
7 existed prior to Ross' undertaking its build out.

8 THE WITNESS: Right. I believe I recall
9 that there was a staircase and a stairwell.
10 Prior --

11 MS. REICHMUTH: Hang on. Our lights just
12 went out here.

13 THE WITNESS: You just gotta move.

14 THE VIDEOGRAPHER: You gotta move.

15 MS. REICHMUTH: Apparently, we were too
16 still.

17 THE WITNESS: Sorry about that. Could
18 you --

19 MS. REICHMUTH: Do you want the question
20 read back maybe?

21 THE WITNESS: Yes.

22 (Record read as follows: Question: A
23 staircase that allows access between the basement --
24 a basement and a first floor, you wouldn't expect
25 just to have an open cavity in the floor, correct?
You would expect to see some railings and other
things around that hole and that cavity to allow
people to safely access and use it, correct?)

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1 THE WITNESS: So if it were in use and it
2 was allowed to be accessible you would expect
3 railings, etc. that it was for a prior use.

4 BY MR. PITT:

5 Q Do you recall if those railings were there
6 at the time Ross acquired ownership of the building?
7 Or, I mean, acquired a leasehold right to occupy
8 those spaces in the building?

9 A That's possible.

10 Q Okay. And well, let me just ask you to
11 put it in your own words. What -- what did Ross do
12 with that staircase in relationship to its -- to its
13 build out of the Failing Building?

14 MS. REICHMUTH: Objection. Asked and
15 answered.

16 THE WITNESS: I believe Ross left the
17 staircase in place and infilled the floor slab for
18 general retail use.

19 BY MR. PITT:

20 Q Okay. And prior to Ross undertaking that
21 build out, do you have any awareness one way or the
22 other what that -- what that basement space was used
23 for prior to Ross acquiring interest in it?

24 A I believe it was a retail use, mercantile,
25 J.J. Newberry.

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1 Q Okay. And did Ross -- let me ask -- did
2 Ross utilize that space in the basement for a retail
3 or mercantile use?

4 MS. REICHMUTH: Objection. Vague and
5 ambiguous.

6 THE WITNESS: Which part of the basement?
7 BY MR. PITT:

8 Q Well, let me ask you this way: As part of
9 its build out, did Ross have an intention to utilize
10 the basement space within the footprint of the
11 Failing Building for mercantile or retail use?

12 MS. REICHMUTH: Objection. Vague and
13 ambiguous.

14 THE WITNESS: We do have a retail use in
15 the basement where the operation of the Ross
16 basement use ends in its relationship to the Lease
17 line or whatever. I mean, I'm not sure. There was
18 a portion there that we are not currently using.

19 BY MR. PITT:

20 Q Well, Ross is using a portion of the
21 basement for storage on the Richmond side of the
22 building, correct?

23 A I believe it's storage, office use,
24 administrative.

25 Q Okay. And on the Failing side of the

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1 MR. PITT: Yes. If we could mark it as --
2 was it 85? 86?

3 MS. REICHMUTH: I think we're on 85.
4 (Exhibit 85 marked
5 for identification.)

6 MR. EDELSON: Now we have 82, 86 because
7 the Addendum and the Lease. The Lease should have
8 been 84, the Addendum to the Lease 85.

9 MR. PITT: I think the Addendum was
10 already in there.

11 MS. REICHMUTH: Yeah. The Addendum is
12 No. 9.

13 BY MR. PITT:

14 Q Yeah. If you could take a quick look at
15 this, Mr. Haskins, I would appreciate it, and tell
16 me what this is to your understanding.

17 A Well, in reviewing the documents, with the
18 exception of three pages that seem to be co-mingled,
19 the majority of this is the original sign exhibits
20 and documents for doing signage for the original
21 store.

22 Q Let's focus on the first page. This is
23 the way the document came to us. Or I believe it
24 came to us. But primarily I'm concerned with and
25 want to look at the first page.

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1 A Okay. It's very small.

2 Q Yeah. To your understanding, what does
3 this first page represent?

4 A It appears to be the store layout for the
5 basement.

6 Q Okay. And on the side there it's got
7 Ross. It says "Ross Store Remodel." Do you see
8 that?

9 A I see it.

10 Q Right above the A -- A 1.0. Do you see
11 that on the right-hand side of the document?

12 A I see that.

13 Q Then next to that is the name of Musil,
14 Perkowitz & Ruth. Do you see that?

15 A I see that.

16 Q Who are Musil, Perkowitz & Ruth?

17 A I believe Musil, Perkowitz & Ruth were one
18 of the architects involved as an architect of record
19 with this project for Ross.

20 Q Okay. And this first page represents the
21 build out plans for the basement space on the
22 Failing Building, at least in part, correct?

23 A It shows a layout. I don't know if it's a
24 build out quite. I can't see any of these
25 references.

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1 Q Okay. Well, a layout, right?

2 A Correct.

3 Q A layout in terms of intended use?

4 A That's my belief.

5 Q Okay. There's another document, Counsel,
6 that I sent down that is just two pages, and I
7 actually blow -- I actually blow up one of the
8 notations on the exhibit the witness was just
9 looking at. If you could pull that out of the
10 stack, please.

11 MS. REICHMUTH: I'm sorry. Could you
12 repeat that?

13 MR. PITT: Yeah. So there's a two-page
14 document I sent down which has -- which has a blow
15 up of one of the notations on that first page of the
16 Exhibit 85 the witness was just looking at.

17 MS. REICHMUTH: Okay.

18 MR. PITT: And then another copy of that
19 exhibit. Of that first page. Sorry.

20 MS. REICHMUTH: I think this is what
21 you're --

22 MR. PITT: Let me see. Let me see.
23 Could I see that again?

24 MS. REICHMUTH: Sure.

25 MR. PITT: I believe so. That's right.

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1 That's correct.

2 Q I'm going to represent to you that -- that
3 the document behind the first page comes right out
4 of the city records regarding Ross' plans pertaining
5 to the Failing Building and its use of that space.
6 And if you look at it it looks identical, and
7 correct me if I'm wrong, to the document that is
8 Bates numbered ROS_0002888.

9 A Okay.

10 Q Do you see that, sir?

11 A I see it.

12 Q Does it look identical to you, the back
13 page, the original Ross document? Or the previous
14 Ross document I just showed you?

15 MS. REICHMUTH: Objection.
16 Mischaracterizes the documents. It looks like
17 there's some small -- small differences. I don't
18 know if it's just a -- because of the reproduction
19 of the document.

20 MR. PITT: Okay. Fair enough.

21 Q Let me ask it this way: I will represent
22 to you that the document from behind came from the
23 city records. But more importantly, the front page
24 of this document, that I'd like to identify as
25 Exhibit No. 86. I have blown up the notation that

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1 exists on both of -- both these documents, I mean,
2 both Exhibit 86, as well as the first page of
3 Exhibit 85.

4 If you could read the notation that's in
5 the middle of the page on Exhibit 86.

6 (Exhibit 86 marked
7 for identification.)

8 THE WITNESS: Okay. Would you repeat
9 that, please?

10 BY MR. PITT:

11 Q Yeah. The first page of Exhibit 86 I have
12 blown up the notation that exists on Exhibit 85, the
13 first page of Exhibit 85. Can you read that
14 notation?

15 A This space vacant, no occupancy, no
16 storage, separate permit required for occupancy.

17 Q Okay. Is that a fair -- well, let me ask
18 you this: Does that comport with your understanding
19 of Ross' intended use of the space?

20 MS. REICHMUTH: Objection. Vague and
21 ambiguous.

22 BY MR. PITT:

23 Q Well, let me ask it this way: As part of
24 the build out that you oversaw, is it your
25 understanding that Ross did not attempt to use the

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1 shaded area on Exhibit 85 for occupancy, for
2 storage, and that the space was to be vacant?

3 A Yes. I don't believe it was Ross' intent
4 to use it. We have access to it. I believe there's
5 egress from it.

6 Q Okay. And I understand your testimony
7 that prior to that it is your understanding that
8 J.J. Newberrys utilized that space for a mercantile
9 and retail use, correct?

10 MS. REICHMUTH: Objection. Vague and
11 ambiguous, calls for speculation.

12 THE WITNESS: That was my understanding.
13 That's my recollection.

14 BY MR. PITT:

15 Q Okay. Do you recall doing any analysis or
16 evaluation of what Ross' intended use of that
17 basement space may have on its future uses?

18 MS. REICHMUTH: I'm sorry. Could you read
19 back that question?

20 (Record read as follows: Question: Okay.
21 Do you recall doing any analysis or evaluation of
22 what Ross' intended use of that basement space may
23 have on its future uses?)

23 MS. REICHMUTH: Objection. Vague and
24 ambiguous, calls for speculation.

25 THE WITNESS: In '96?

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1 MR. PITT: Yes. In '96.

2 THE WITNESS: I have no specific
3 recollection. I would believe that we would have
4 looked -- Ross would have looked at all of the space
5 for both buildings in contemplating the final
6 layouts.

7 MR. PITT: Okay. Let me -- maybe I --
8 maybe I could ask you more directly.

9 Q Do you know if Ross evaluated or
10 considered whether or not its decision to fill in
11 the floor and remove that -- to remove a portion of
12 the grand staircase and fill in that section of the
13 floor and to submit plans showing no occupancy of
14 that space would effectively prevent a mercantile or
15 retail use of that space in the future?

16 MS. REICHMUTH: Objection. Vague and
17 ambiguous, calls for speculation and an expert
18 opinion.

19 THE WITNESS: Yeah. I would have no
20 knowledge of the future aspect.

21 BY MR. PITT:

22 Q Okay. So is it fair to say that in
23 overseeing this project, as you testified you did,
24 that was something you did not consider?

25 MS. REICHMUTH: Objection. Misstates

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1 testimony, vague and ambiguous.

2 THE WITNESS: No. I believe I said I
3 didn't contemplate future use for the store design.

4 BY MR. PITT:

5 Q What about future use of the space after
6 Ross leaves the space at the conclusion of its
7 lease?

8 A In 1996?

9 MS. REICHMUTH: Objection. Objection.
10 Vague and ambiguous.

11 MR. PITT: Correct.

12 THE WITNESS: I have no recollection of
13 thinking that far ahead.

14 BY MR. PITT:

15 Q So if I represent to you that occupancy in
16 the basement has effectively been abandoned, do you
17 have any reason to not believe that to be true?

18 MS. REICHMUTH: Objection. Vague and
19 ambiguous, calls for a legal conclusion, lacks
20 foundation.

21 THE WITNESS: I wouldn't have knowledge of
22 what the jurisdictional requirements are for
23 occupancy, particularly in the future.

24 BY MR. PITT:

25 Q Okay. And that's a fair point. So at the

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1 time of the build out did you, or do you have
2 knowledge of anyone from Ross conducting a
3 jurisdictional analysis of what effect Ross' build
4 out may have on a future use of this building and
5 space?

6 MS. REICHMUTH: Objection. Vague and
7 ambiguous and lacks foundation, asked and answered.

8 THE WITNESS: I have no recollection of
9 the future use. I would have assumed it's -- it was
10 retail, Ross is retail, and if Ross contemplated a
11 future use it would be retail.

12 BY MR. PITT:

13 Q But the notation on the plans submitted to
14 the city say this space vacant, no occupancy, no
15 storage, separate permit required for occupancy.
16 You see that, correct?

17 A I do.

18 Q So it's fair to say Ross did not intend to
19 utilize that space in terms of storage, retail,
20 mercantile, correct?

21 MS. REICHMUTH: Objection. Vague and
22 ambiguous.

23 THE WITNESS: Only at that point in time.
24 This was at the time of a construction document. It
25 wouldn't speak to the future.

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1 BY MR. PITT:

2 Q Okay. In terms of your build out though,
3 the grand staircase was removed and the first floors
4 filled in, correct?

5 MS. REICHMUTH: Objection. Misstates
6 testimony.

7 THE WITNESS: I believe I've said the
8 staircase is still there.

9 BY MR. PITT:

10 Q Okay. Without quibbling over whether it's
11 all there or partially there, the cavity where the
12 staircase used to allow access from the first and
13 second -- the first floor, the basement is filled
14 in, it's not accessible. Fair enough?

15 A Correct.

16 Q So if Ross wanted to put a mercantile or
17 retail use down there, they would have to do some
18 pretty substantial alterations, correct?

19 MS. REICHMUTH: Objection. Vague and
20 ambiguous, calls for speculation.

21 THE WITNESS: I don't know what you mean
22 by "substantial."

23 BY MR. PITT:

24 Q Well, they'd have to replace the grand
25 staircase and remove the infill from the floor and

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1 do whatever else is required to reestablish
2 occupancy down there, correct?

3 MS. REICHMUTH: Objection.

4 MR. PITT: For mercantile or retail use.

5 MS. REICHMUTH: Objection. Lacks
6 foundation, calls for an expert opinion.

7 THE WITNESS: Yeah. I'm not sure what the
8 requirement would be today, but the staircase is
9 there, so it would be just probably a question of
10 removing the infill and using the stairs.

11 BY MR. PITT:

12 Q And building up railings and appropriate
13 safety apparatus so you could actually use it as a
14 staircase, correct?

15 MS. REICHMUTH: Objection. Vague.

16 BY MR. PITT:

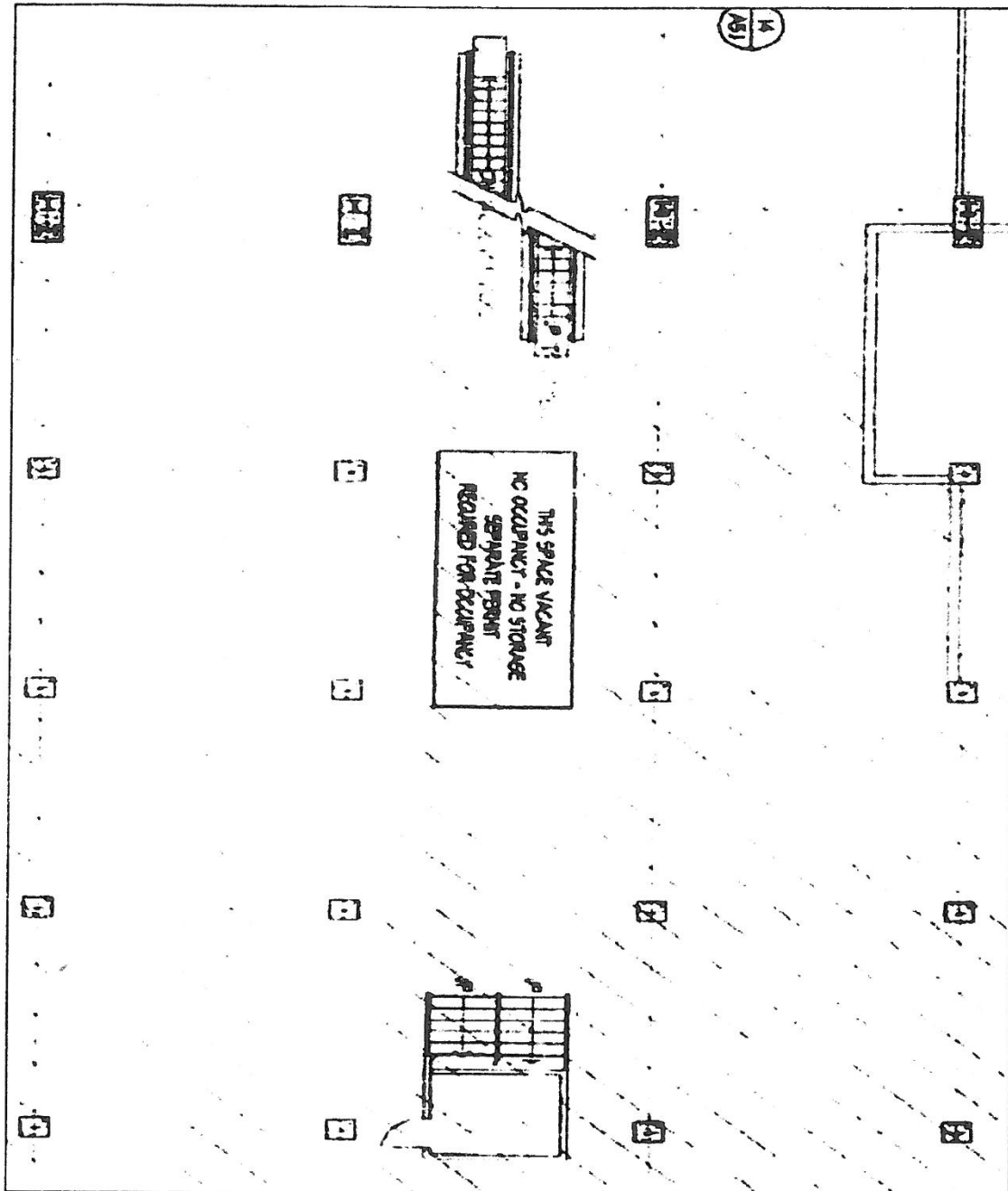
17 Q It's not just an open cavity in the floor,
18 sir, correct?

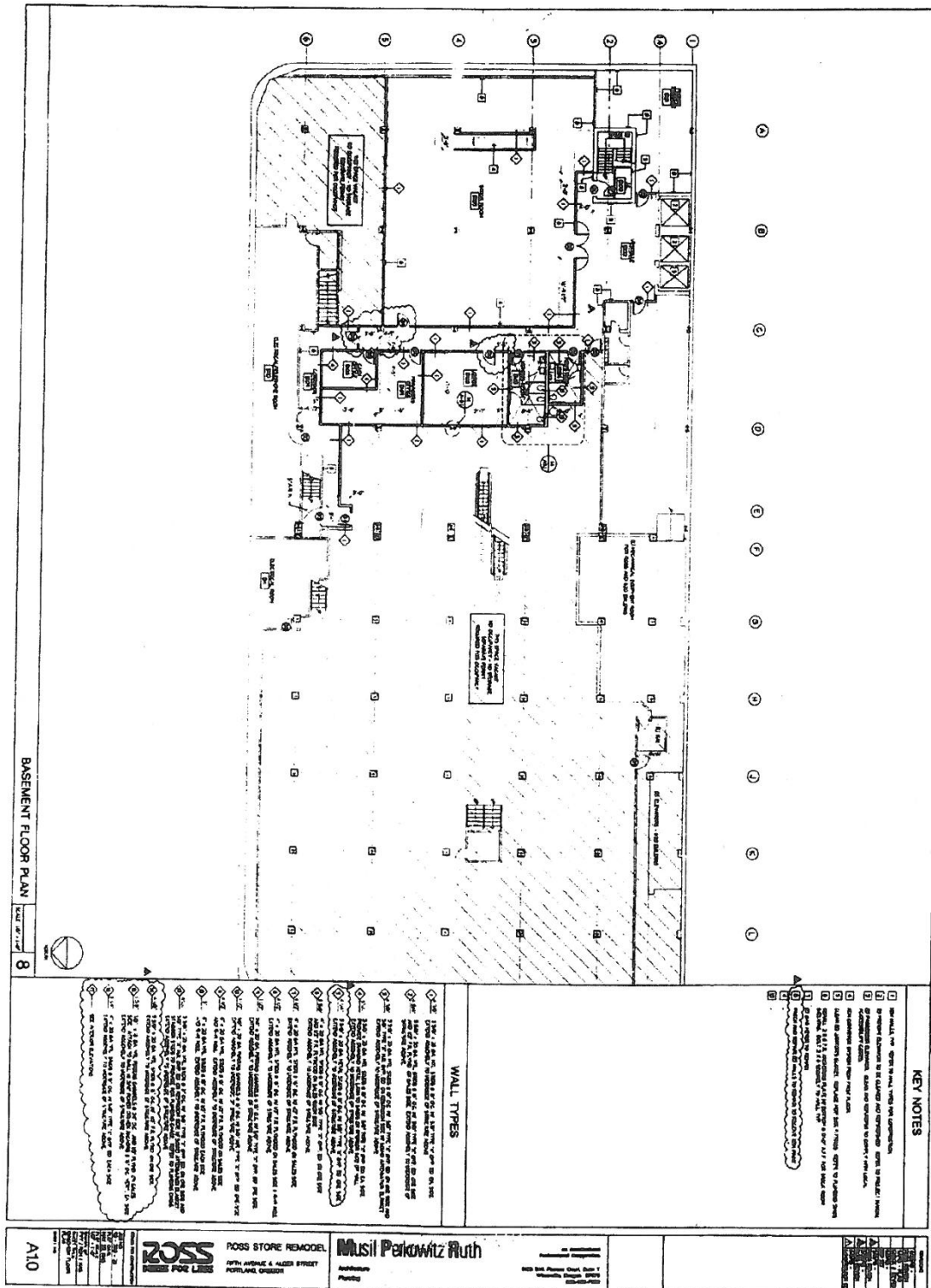
19 MS. REICHMUTH: Objection. Vague and
20 ambiguous.

21 THE WITNESS: When?

22 BY MR. PITT:

23 Q Well, when -- prior to Ross conducting
24 it's build out in 1996, is it your testimony that
25 the grand staircase between the first floor in the





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CERTIFICATE OF REPORTER

I, DONIELLE DEL CARLO, a Certified
Shorthand Reporter, hereby certify that the witness
in the foregoing deposition was by me duly sworn to
tell the truth, the whole truth, and nothing but the
truth in the within-entitled cause;

That said deposition was taken down in
shorthand by me, a disinterested person at the time
and place therein stated, and that the testimony of
the said witness was thereafter reduced to
typewriting, by computer, under my direction and
supervision;

That before completion of the deposition,
review of the transcript [] was [x] was not
requested. If requested, any changes made by the
deponent (and provided to the reporter) during the
period allowed are appended hereto.

I further certify that I am not of counsel
or attorney for either or any of the parties to the
said deposition, nor in any way interested in the
event of this cause, and that I am not related to
any of the parties thereto.

DATED: November 3, 2015



DONIELLE DEL CARLO, CSR No. 10476